

Public Hearing – March 1, 2021  
Environment Committee

Testimony Submitted by Commissioner Katie S. Dykes

**House Bill No. 6501 – AAC the Streamlining of Certain Programs of the Department of Energy and Environmental Protection.**

Thank for the opportunity to present testimony regarding the Department of Energy and Environmental Protection's (DEEP) proposal, House Bill No. 6501 – AAC the Streamlining of Certain Programs of the Department of Energy and Environmental Protection. This proposal, which DEEP strongly supports, makes several revisions to environmental statutes intended to streamline and improve DEEP's programs and processes. The Lamont Administration is committed to ensuring that the administration of our environmental and conservation programs and regulations is carried out in an efficient, transparent, and predictable manner, to facilitate compliance and carefully steward agency resources. The proposed revisions below reflect this intention.

**Section 1**

This section would allow for online wastewater treatment facility operator certification exams, incorporate a Class 4 Operator in Training classification, allow an operator to retain certification through appropriate continuing education after leaving the field and allow transition of administration of an operator certification renewal program to the New England Interstate Water Pollution Control Commission (NEIWPCC) which administers wastewater certification programs for other New England States.

**Section 2**

This section would eliminate the requirement that a member of the Nitrogen Credit Advisory Board (NCAB) be "a representative from a municipality with a population of less than twenty thousand that purchases nitrogen credits." Currently, only three towns in the state meet that requirement: Beacon Falls, Seymour and Killingly. This membership pool could shrink further through regionalization of wastewater treatment or further treatment plant upgrades to remove additional nitrogen.

**Section 3**

This section would clarify that aquaculture structures approved by the Army Corps of Engineers are exempt from state permits under sections 22a-359 through 22a-363f, in accordance with existing practice and legislative intent.

**Section 4**

This section repeals the requirement that Connecticut municipalities obtain approval from the DEEP prior to the adoption of a municipal noise control ordinance. This simplifies the process for municipalities and eases an administrative burden for DEEP. This section would amend the State's noise program to provide municipalities the option to adopt a noise program without obtaining approval from DEEP. Making the State's noise control program smarter and more flexible by providing municipalities the opportunity to adopt a program that best serves their needs is a reasonable and responsible approach to this issue since local governments are the authorities best situated for effective enforcement. Funding for the State noise program was eliminated over 20 years ago. As such, DEEP does not have staff trained for noise related issues nor does DEEP have the equipment to test and enforce noise regulations. Regulation of noise has been transferred de facto to local authorities. Noise events are highly localized, limited in duration and often occur outside of normal working hours.

## **Section 5**

This section provides DEEP the authority to require a source of air pollution required to obtain a permit under Title V of the Clean Air Act to comply with 40 Code of Federal Regulations Part 62. This corrects an inconsistency between the statute and its implementing regulations and maintains the viability of the CT's federally approved Title V program rather than the threat of a Federally implemented Title V program.

This minor revision adds authority for DEEP to implement federal requirements through Title V operating permits for certain incineration sources. The change does not create new obligations for those sources, nor does it decrease standards as they must currently meet the same standards at the federal level. This change will create a significant efficiency gain for DEEP and a better compliance situation for regulated sources of air pollution.

The Title V operating permit program consolidates all the statutory and regulatory air pollution control requirements applicable to the State's largest sources of air pollution into a comprehensive document, enabling those sources and DEEP to more easily assure compliance and limit pollutant emissions for benefit of the environment and human health. Through this program DEEP is delegated the authority to implement multiple federal requirements codified in Title 40 Code of Federal Regulations (CFR), but the statute currently inadvertently omits Part 62, even though Part 62 is included in the implementing Title V permit program regulation.

This lack of statutory authority has become a more significant problem in the last decade as EPA has promulgated new requirements in 40 CFR Part 62 for a number of incineration sources, including municipal sewage sludge incinerators in Waterbury, Naugatuck and Hartford. As a result, DEEP cannot issue Title V permits to the owners of the sewage sludge incinerators, creating a deficiency in Connecticut's Title V operating permit program while subjecting the owners of the incinerators to a combination of state and federal oversight for air emissions. Absent this addition to the statutory authority, DEEP's only other option is adoption of a regulation for each category of incinerator regulated by Part 62. That option is a lengthy and resource intensive process. If provided with the missing piece of statutory authority, DEEP can manage the Part 62 sources with no additional resource needs.

## **Section 6**

Technical Revision to Sec 23-37(d) will eliminate the statutory conflict with Sec 23-35 and 23- 55 that authorize providing mutual aid among states. Sec 23-35 authorizes the State Fire Warden to equip and maintain qualified wildland firefighters and to deploy those firefighters to fight wildland fires within the state or when called upon by another state. And Sec. 23-55 authorizes the State Fire Warden to carry out regional state and eastern Canadian provinces mutual aid through Articles articulated in Northeastern Forest Fire Protection Compact (Sec. 23-53). Public Act 19-37 An Act Concerning Qualified Forest Firefighters addressed a critical need in meeting the mandates established Chapters 449 and 550 of the CGS, including sections 23-35 and 23-55, by making clear that the state forest fire warden may, when he determines additional state forest fire control personnel are required, supplement state forest fire control personnel with temporary emergency workers who meet the training and qualification requirements of the National Incident Coordinating Group. However, the Public Act inadvertently created a conflict between these Chapters by limiting the additional personnel that may be used to supplement the state forest fire control personnel to only working on in state fires, rendering the state fire warden's capacity to provide mutual aid to other states moot. Expanding the reference from "in this state" to include all members of a forest fire compact authorized to provide reciprocal aid will resolve this statutory conflict, restore the intended benefits of the compact and enhance the State's capacity to address catastrophic fires.

## **Section 7**

Technical Revision to Sec 23-53, addition of Article XV will allow for the exchange of forest fire protection and control resources beyond the northeast. As provided for in Chapter 450 of the CGS, Connecticut is a member of the Northeastern Interstate Forest Fire Protection Compact. Established in 1949, this was the nation's first regional forest fire compact. At that time, no need was found to include a clause within the compact to address issues of compact to compact liability, and hence none of the member states included such language in their relevant statutes. Concerns over issues of liability had evolved by the time the establishment of additional compacts was contemplated and federal statutes were adopted to address the issue. Since the founding of the Northeastern Compact and adoption of federal statutes addressing compact to compact liability, seven more interstate forest fire compact, encompassing forty-three states, have been established. And each subsequent compact was written to include and each included language for inter-compact protections. The consequence of this gap is that no state is willing or capable of providing mutual aid to a state whose membership in a compact is based on statutory authorization that does not address the compact-to-compact liability issue.

Recognizing this gap within the Northeastern Interstate Forest Fire Protection Compact, each state within the compact is left to address the deficiency through legislative action. Thus far, nine of the twelve states and provinces within the Northeastern Compact have addressed the compact-to-compact liability language. This proposal is to do that for Connecticut. Inserting Article XV will correct this deficiency.

During the summer of 2020 Connecticut experienced severe summer drought and numerous persistent ground fires which taxed available in state resources, both DEEP and local municipal. Often when Connecticut experiences increased wildfire activity, adjacent states who are members of the Northeastern Forest Fire Protection Compact are also experiencing increased wildfire activity, typically due to regional drought conditions. This limits the ability of participating Northeast Compact state resources to provide mutual aid due to similar home-state threats.

In 2016, Connecticut had one of the largest fires in decades, and less than 200 miles from our border, New York and Pennsylvania had multi-thousand-acre fires. Again, almost the entire Northeast was experiencing similar drought and wildfire issues. If Connecticut were in the position of needing assistance, events over the last few years have shown that at least three of the eight compacts nationally wouldn't send resources to Connecticut because we do not have proposed Compact to Compact liability language in place. Amending Section 23-53 by including extended liability coverage for resources exchanged between compacts will reduce the state's risk exposure and will allow Compacts to provide Connecticut assistance if needed. Article IX of CGS section 23-53 requires other 100% reimbursement to Connecticut by the requesting agency should state resources be deployed out of state. It is fair and equitable to maintain reciprocal liability provisions to cover any lawfully incurred expenses in the exercise of these services from out of state providers to extinguish forest fires.

### **Section 8**

This section would allow the holder of a pesticide certification that has lapsed for less than one year to renew their certification without re-examination and to establish late fees for such late renewal. The proposed change will provide for consistency with the existing grace period allowance for the renewal of arborist certification, which is managed as a pesticide certification category, thereby eliminating confusion for those renewing multiple certification categories.

### **Section 9**

This section gives DEEP flexibility to register, renew and collect pesticide product registration fees on an annual basis. Due to the volume of registration and renewal applications received, pesticides are registered and renewed in five-year cycles based on the first letter of the registrant's name. However, registrants find this schedule very confusing and often submit the incorrect fee resulting in a significant amount of staff time working with registrants to collect the correct fee and issuing refunds for overpayments. DEEP is now working to move the pesticide registration process to an electronic submission system which will reduce the staff time required to process these applications, allow the department to register and renew products on an annual basis and eliminate the confusion currently created by the current five-year registration cycle. Because the department does not know exactly when electronic filing of pesticide registration and renewal applications will be available, state statutes must allow for the flexibility to maintain the five-year registration cycle until an electronic filing system is up and running. All of the other New England states currently register and renew products on an annual basis and have found that this registration schedule greatly simplifies the pesticide registration and renewal process. Registrant businesses also prefer the annual registration as a more affordable option.

### **Section 10**

This section would establish the authority to set annual fees for General Permits which will allow revenues to stay neutral and assist the regulated community by not requiring a large application fee. Many individual permits have annual fees. We would like to maintain a similar structure as more individual permits move to general permit and this section would give the department that authority. This will provide consistency for the regulated community and the department and keep fee revenue neutral.

## **Section 11**

This section would require that a petition for hearing designate a person authorized to withdraw that petition in the event discussions between that person and the Department resolve the issues that triggered the petition. This would ensure that the current success at resolution and subsequent withdrawals of petitions for hearing extends to all cases, not just when a petition includes this now-optional designation. Not only would this promote resolution of matters that caused a petition to be filed, it would also prevent the Department from using significant resources for a hearing when the issues that prompted the petition have been resolved. The Committee may wish to consider language that would give DEEP the authority to reject a petition without prejudice to re-filing if a petition is filed without this designation.

Thank you for the opportunity to present testimony on this proposal. Should you have any questions, please do not hesitate to contact James Albis at [James.Albis@ct.gov](mailto:James.Albis@ct.gov).